

AMENDED IN ASSEMBLY MAY 1, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2886

Introduced by Assembly Member Frommer

February 24, 2006

An act to amend ~~Sections 530.5 and 786~~ *Section 530.5* of, and to add Section 593h to the Penal Code, relating to crime.

LEGISLATIVE COUNSEL'S DIGEST

AB 2886, as amended, Frommer. Crime.

Existing law provides that every person who willfully obtains personal identifying information about another person, as defined, and uses that information for any unlawful purpose is guilty of a crime punishable by imprisonment in a county jail not to exceed one year, or a fine not to exceed \$1,000, or both, or by imprisonment in the state prison, or a fine not to exceed \$10,000, or both. Existing law also provides that every person who, with the intent to defraud, acquires, transfers, or retains possession of the personal identifying information, as defined, of another person, is guilty of a crime punishable by imprisonment in the county jail not exceeding a year, a fine not exceeding \$1,000, or by both that imprisonment and fine.

This bill, would provide that a second or subsequent violation of these provisions is also punishable by a fine not to exceed \$10,000, imprisonment in the state prison for 16 months, or two or three years, or by both that fine and imprisonment. This bill would also provide that every person who, with intent to defraud, sells, transfers, or conveys, the personal information of another without that person's consent, or who, within any 12-month period acquires the personal identifying information of 4 or more other persons which he or she

knows or has reason to know was taken in violation of provisions relating to identity theft, is guilty of grand theft, punishable by imprisonment in a county jail for a period not exceeding one year or in the state prison for 16 months, or 2 or 3 years.

Because this bill would create new crimes, this bill would impose a state-mandated local program.

~~This bill would provide that every person convicted of a felony violation of, or conspiracy to violate these provisions is punishable by an additional 2-year term of imprisonment in the state prison.~~

~~Because this bill would increase the prosecutorial duties of local officials, this bill would create a state-mandated local program.~~

Existing federal law provides that mail theft is punishable by a fine, imprisonment for a period not exceeding 5 years, or by both.

This bill would provide that mail theft and receipt of stolen mail are crimes punishable by a fine not exceeding \$1,000, imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment, or by a fine not exceeding \$10,000, imprisonment in the state prison for a period not exceeding 16 months, or 2 or 3 years, or by both that fine and imprisonment, as specified. This bill would also provide that the jurisdiction of a criminal action for violation of these provisions shall include the county in which the mail theft or receipt of stole mail occurred and the county in which the residence or place of business of the direct victim or an indirect victim is located. Because this bill would create new crimes, this bill would impose a state-mandated local program.

~~Existing law provides that the jurisdiction of a criminal action for unauthorized use of personal identifying information includes the county in which the theft of the information occurred and the county in which the information was used for an illegal purpose.~~

~~This bill would expand these provisions to include unauthorized retention and transfer of personal identifying information. This bill would also add the county in which the victim resided at the time the offense was committed to the jurisdictions in which a criminal action may be brought for commission of these crimes.~~

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. *This act shall be known and may be cited as the*
2 *“Personal Information Trafficking and Mail Theft Prevention*
3 *Act.”*

4 SEC. 2. Section 530.5 of the Penal Code is amended to read:

5 530.5. (a) Every person who willfully obtains personal
6 identifying information, as defined in subdivision (b), of another
7 person, and uses that information for any unlawful purpose,
8 including to obtain, or attempt to obtain, credit, goods, services,
9 or medical information in the name of the other person without
10 the consent of that person, is guilty of a public offense, and upon
11 conviction therefor, shall be punished either by imprisonment in
12 a county jail not to exceed one year, a fine not to exceed one
13 thousand dollars (\$1,000), or both that imprisonment and fine, or
14 by imprisonment in the state prison, a fine not to exceed ten
15 thousand dollars (\$10,000), or both that imprisonment and fine.

16 (b) “Personal identifying information,” as used in this section,
17 means the name, address, telephone number, health insurance
18 identification number, taxpayer identification number, school
19 identification number, state or federal driver’s license number, or
20 identification number, social security number, place of
21 employment, employee identification number, mother’s maiden
22 name, demand deposit account number, savings account number,
23 checking account number, PIN (personal identification number)
24 or password, alien registration number, government passport
25 number, date of birth, unique biometric data including
26 fingerprint, facial scan identifiers, voice print, retina or iris
27 image, or other unique physical representation, unique electronic
28 data including identification number, address, or routing code,
29 telecommunication identifying information or access device,
30 information contained in a birth or death certificate, or credit card
31 number of an individual person.

32 (c) In any case in which a person willfully obtains personal
33 identifying information of another person, uses that information
34 to commit a crime in addition to a violation of subdivision (a),
35 and is convicted of that crime, the court records shall reflect that

1 the person whose identity was falsely used to commit the crime
2 did not commit the crime.

3 (d) (1) Every person who, with the intent to defraud, acquires,
4 or retains possession of the personal identifying information, as
5 defined in subdivision (b), of another person is guilty of a public
6 offense, and upon conviction therefor, shall be punished by
7 imprisonment in a county jail not to exceed one year, or a fine
8 not to exceed one thousand dollars (\$1,000), or by both that
9 imprisonment and fine.

10 (2) If a person has previously been convicted of a violation of
11 this section and subsequently violates this subdivision, he or she
12 shall be punished by a fine not to exceed one thousand dollars
13 (\$1,000), imprisonment in a county jail for a period not to exceed
14 one year, or by both that fine and imprisonment, or by a fine not
15 to exceed ten thousand dollars (\$10,000), imprisonment in the
16 state prison for 16 months, or two or three years, or by both that
17 fine and imprisonment.

18 (e) Every person who, with the intent to defraud, sells,
19 transfers, or conveys, the personal identifying information of
20 another, without that person's consent, is guilty of grand theft,
21 punishable by imprisonment in a county jail for a period not
22 exceeding one year or in the state prison for 16 months, or two or
23 three years.

24 (f) Notwithstanding subdivision (d), every person who, within
25 any 12-month period, acquires the personal identifying
26 information of four or more other persons, which he or she
27 knows or has reason to know was taken or retained in violation
28 of this section, is guilty of grand theft punishable by
29 imprisonment in a county jail for a period not exceeding one year
30 or in the state prison for 16 months, or two or three years.

31 (g) Every person who, with the intent to defraud, acquires,
32 transfers, or retains possession of the personal identifying
33 information, as defined in subdivision (b), of another person who
34 is deployed to a location outside of the state is guilty of a public
35 offense, and upon conviction therefor, shall be punished by
36 imprisonment in a county jail not to exceed one year, or a fine
37 not to exceed one thousand five hundred dollars (\$1,500), or by
38 both that imprisonment and fine.

39 (h) For purposes of this section, "deployed" means that the
40 person has been ordered to serve temporary military duty during

1 a period when a presidential executive order specifies that the
2 United States is engaged in combat or homeland defense and he
3 or she is either a member of the armed forces, or is a member of
4 the armed forces reserve or the National Guard, who has been
5 called to active duty or active service. It does not include
6 temporary duty for the sole purpose of training or processing or a
7 permanent change of station.

8 ~~(i) Every person convicted of a felony violation of, or~~
9 ~~conspiracy to violate this section shall receive, in addition to any~~
10 ~~other punishment authorized by law, including Section 667.5, a~~
11 ~~full, separate, and consecutive term of imprisonment in the state~~
12 ~~prison for two years for each prior conviction of a felony~~
13 ~~violation of, or conspiracy to violate this section whether or not~~
14 ~~the prior conviction resulted in a term of imprisonment.~~

15 ~~SEC. 2.~~

16 *SEC. 3.* Section 593h is added to the Penal Code, to read:

17 593h. (a) As used in this section:

18 (1) "Authorized depository" means a mailbox, post office box
19 or rural box used by postal customers to deposit outgoing mail or
20 used by the Postal Service to deliver incoming mail.

21 (2) "Mail" means any letter, card, parcel or other material that:

22 (A) Is sent or delivered by means of the Postal Service.

23 (B) Has postage affixed by the postal customer or Postal
24 Service or has been accepted for delivery by the Postal Service.

25 (C) Is placed in any authorized depository or mail receptacle
26 or given to any Postal Service employee for delivery.

27 (3) "Mail receptacle" means any location used by the Postal
28 Service or postal customers to place outgoing mail or receive
29 incoming mail.

30 (4) "Postage" means a Postal Service stamp, permit imprint,
31 meter strip or other authorized indication of prepayment for
32 service provided or authorized by the Postal Service for
33 collection and delivery of mail.

34 (5) "Postal Service" means the United States Postal Service.

35 (b) A person commits the crime of mail theft or receipt of
36 stolen mail if the person intentionally, without claim or pretense
37 of right, does any of the following:

38 (1) Takes or, by fraud or deception, obtains mail of another
39 from a post office, postal station, mail receptacle, authorized
40 depository, or mail carrier.

1 (2) Takes from mail of another any article contained therein.

2 (3) Secretes, embezzles, or destroys mail of another or any
3 article contained therein.

4 (4) Takes or, by fraud or deception, obtains mail of another
5 that has been delivered to or left for collection on or adjacent to a
6 mail receptacle or authorized depository.

7 (5) Buys, receives, conceals, or possesses mail of another or
8 any article contained therein knowing that the mail or article has
9 been unlawfully taken or obtained.

10 (c) Mail theft or receipt of stolen mail is a crime punishable by
11 a fine not exceeding one thousand dollars (\$1,000),
12 imprisonment in a county jail for a period not exceeding one
13 year, or by both that fine and imprisonment, or by a fine not
14 exceeding ten thousand dollars (\$10,000), imprisonment in the
15 state prison for 16 months, or two or three years, or by both that
16 fine and imprisonment.

17 (d) The jurisdiction of a criminal action for violation of this
18 section shall include all of the following:

19 (1) The county in which the mail theft or receipt of stolen mail
20 occurred.

21 (2) The county in which the residence or the place of business
22 of the direct victim or an indirect victim of the mail theft or
23 receipt of stolen mail is located.

24 (e) It is a defense to prosecution pursuant to this section that
25 the defendant acted under an honest claim of right in that:

26 (1) The defendant was unaware that the property was that of
27 another person.

28 (2) The defendant reasonably believed that the he or she was
29 entitled to the property involved or had a right to acquire or
30 dispose of it as the defendant did.

31 (3) The property involved was that of the defendant's spouse,
32 unless the parties were not living together as husband and wife
33 and were living in separate households at the time of the alleged
34 offense.

35 (e) This section does not apply to an employee charged with
36 the operation of a county jail, local detention facility, or facility
37 under the supervision of the Department of Corrections and
38 Rehabilitation if the employee is carrying out his or her official
39 duties to protect the safety and security of the facility.

40 ~~SEC. 3. Section 786 of the Penal Code is amended to read:~~

1 ~~786. (a) When property taken in one jurisdictional territory~~
2 ~~by burglary, carjacking, robbery, theft, or embezzlement has~~
3 ~~been brought into another, or when property is received in one~~
4 ~~jurisdictional territory with the knowledge that it has been stolen~~
5 ~~or embezzled and the property was stolen or embezzled in~~
6 ~~another jurisdictional territory, the jurisdiction of the offense is in~~
7 ~~any competent court within either jurisdictional territory, or any~~
8 ~~contiguous jurisdictional territory if the arrest is made within the~~
9 ~~contiguous territory, the prosecution secures on the record the~~
10 ~~defendant's knowing, voluntary, and intelligent waiver of the~~
11 ~~right of vicinage, and the defendant is charged with one or more~~
12 ~~property crimes in the arresting territory.~~

13 ~~(b) (1) The jurisdiction of a criminal action for unauthorized~~
14 ~~use, retention, or transfer of personal identifying information, as~~
15 ~~defined in Section 530.5 of the Penal Code, shall also include the~~
16 ~~county where the theft of the personal identifying information~~
17 ~~occurred, the county in which the victim resided at the time the~~
18 ~~offense was committed, or the county where the information was~~
19 ~~used for an illegal purpose. If multiple offenses of unauthorized~~
20 ~~use of personal identifying information, all involving the same~~
21 ~~defendant or defendants and the same personal identifying~~
22 ~~information belonging to the one person, occur in multiple~~
23 ~~jurisdictions, any one of those jurisdictions is a proper~~
24 ~~jurisdiction for all of the offenses.~~

25 ~~(2) When charges alleging multiple offenses of unauthorized~~
26 ~~use of personal identifying information occurring in multiple~~
27 ~~territorial jurisdictions are filed in one county pursuant to this~~
28 ~~section, the court shall hold a hearing to consider whether the~~
29 ~~matter should proceed in the county of filing, or whether one or~~
30 ~~more counts should be severed. The district attorney filing the~~
31 ~~complaint shall present evidence to the court that the district~~
32 ~~attorney in each county where any of the charges could have~~
33 ~~been filed has agreed that the matter should proceed in the county~~
34 ~~of filing. In determining whether all counts in the complaint~~
35 ~~should be joined in one county for prosecution, the court shall~~
36 ~~consider the location and complexity of the likely evidence,~~
37 ~~where the majority of the offenses occurred, the rights of the~~
38 ~~defendant and the people, and the convenience of, or hardship to,~~
39 ~~the victim and witnesses.~~

1 ~~(e) This section shall not be interpreted to alter victims' rights~~
2 ~~under Section 530.6.~~
3 SEC. 4. No reimbursement is required by this act pursuant to
4 Section 6 of Article XIII B of the California Constitution because
5 the only costs that may be incurred by a local agency or school
6 district will be incurred because this act creates a new crime or
7 infraction, eliminates a crime or infraction, or changes the
8 penalty for a crime or infraction, within the meaning of Section
9 17556 of the Government Code, or changes the definition of a
10 crime within the meaning of Section 6 of Article XIII B of the
11 California Constitution.